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7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**
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10 TOYRRIFIC, LLC,

11 Plaintiff,

12 v.

13 EDVIN KARAPETIAN, an individual,
14 EDWARD MINASYAN, an individual,
15 LENA AMERKHANIAN, an individual,
16 and EDO TRADING, INC., a California
corporation,

Defendants.

Case No. 2:12-cv-04499-ODW(Ex)

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANTS'
MOTION TO DISMISS [24]**

17 **I. INTRODUCTION**

18 Defendants Edvin Karapetian, Edward Minasyan, Lena Amerkhanian, and EDO
19 Trading, Inc. move to dismiss Plaintiff Toyrrific, LLC's Complaint under Federal
20 Rules of Civil Procedure 12(b)(6) and 12(b)(1), and for a more definite statement
21 under Rule 12(e). (ECF No. 24.) For the following reasons, the Court **GRANTS** in
22 part and **DENIES** in part Defendants' motion.¹

23 **II. FACTUAL BACKGROUND**

24 Toyrrific is a leader in the manufacturing, selling, and marketing of specific
25 types of toys. (Compl. ¶ 8.) It also operates HobbyTron, which sells toys through its
26 website, HobbyTron.com. (*Id.*)
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28 ¹ Having considered the papers filed in support of and in opposition to this Motion, the Court deems
the matter appropriate for decision without oral argument. Fed. R. Civ. P. 78; L.R. 7-15.

1 Karapetian is a former Toyrrific employee who, along with Minasyan, allegedly
 2 stole Toyrrific's products, trade dress, copyrighted materials, trademarks, and trade
 3 secret information to establish a competing business, HobbyChase. (Compl. ¶¶ 6, 11–
 4 15.) HobbyChase operated through the website HobbyChase.com, for which Toyrrific
 5 alleged Karapetian and Minasyan used the same platform, design, content, product
 6 descriptions, photography, and graphics that Toyrrific used for HobbyTron.com.
 7 (Compl. ¶ 15.)

8 As a result of Karapetian and Minasyan's alleged infringement, Toyrrific filed
 9 an action against Karapetian and Minasyan in August 2010 for copyright infringement
 10 and other claims related to the unlawful interference with Toyrrific's company.
 11 *Toyrrific² v. Karapetian* (“*Toyrrific I*”), No. CV 10-5813-ODW(Ex) (C.D. Cal. Aug. 5,
 12 2010). On November 24, 2010, this Court issued a preliminary injunction in
 13 *Toyrrific I* that enjoined Karapetian and Minasyan from continued infringement of
 14 HobbyCase's intellectual property. (Compl. ¶ 16.) The parties ultimately resolved
 15 *Toyrrific I* on December 12, 2011, through the execution of a Settlement Agreement
 16 and Mutual General Release (“Agreement”).

17 By the Agreement, Karapetian and Minasyan agreed to “cease all operations of
 18 the business known as HobbyChase.com” and comply with the Court's preliminary
 19 injunction, which specifically prevented Karapetian and Minasyan's (and any of their
 20 associates') use of the HobbyChase trademark and continuation of the website
 21 HobbyChase.com, or *any similar website*. (Agreement ¶ 3.) Except for claims arising
 22 out of the Agreement, the parties also agreed to “absolutely, forever and fully”
 23 discharge each other and their respective agents “from all claims, administrative
 24 claims, demands, and/or causes of action heretofore or hereafter arising out of,
 25 connected with, or incidental to [*Toyrrific I*].” (Agreement ¶ 4.)

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 27 ² The action currently before the Court is styled as *Toyrrific LLC v. Karapetian*, where “Toyrrific”
 28 has two *r*'s and one *f*. *Toyrrific I*, however, was styled as *Toyrrific LLC v. Karapetian*, where
 “Toyrrific” has one *r* and two *f*s. The Court maintains this subtle distinction.

1 In executing the Agreement, the parties expressly disclaimed that they had not
2 relied on any “statement, representation, or promise by the Parties” regarding any fact
3 relied upon in entering into the Agreement, but instead relied solely “upon their own
4 investigation, legal counsel and judgment.” (Agreement ¶ 7(a).) The parties further
5 agreed that “each Party is aware that it may hereafter discover claims or facts in
6 addition to or different from those they now know or believe to be true with respect to
7 the matters related” to the Agreement, but that all parties nevertheless intended “to
8 fully, finally, and forever settle and release all such matters, and all claims relative
9 thereto, which do now exist, may exist, or heretofore have existed with regard to the
10 dispute.” (Agreement ¶ 7(d).)

11 Toyrrific filed this subsequent action on May 23, 2012. Toyrrific now alleges
12 that Defendants have infringed upon Toyrrific’s business in direct violation of the
13 Agreement. (Compl. ¶ 21.) Specifically, Toyrrific contends Defendants formed EDO
14 Trading, a new business that infringes upon Toyrrific’s products through the operation
15 of a new website, airsofttrc.com. (Compl. ¶ 20.) Toyrrific alleges airsofttrc.com is
16 nearly identical to HobbyChase.com, and was formed prior to the execution of the
17 Agreement (November 24, 2010), but after this Court entered the preliminary
18 injunction in *Toyrrific I* (December 12, 2011). (Compl. ¶ 19–21.) In spite of the
19 recitations in the Agreement, Toyrrific maintains that in agreeing to settle *Toyrrific I*,
20 it relied on Defendants’ representations that they would not continue infringement.
21 (Compl. ¶ 19.)

22 The Complaint names the same two Defendants as the prior action (Karapetian
23 and Minasyan), as well as two new Defendants: Lena Amerkhanian, who is alleged to
24 be Minasyan’s girlfriend, and EDO Trading, a corporation alleged to have been
25 formed by Minasyan, Karapetyan, and Amerkhanian prior to the execution of the
26 Agreement. (Compl. ¶ 20.) Defendants now move to dismiss Toyrrific’s Complaint
27 in its entirety.
28

III. LEGAL STANDARD

Dismissal under Rule 12(b)(6) can be based on “the lack of a cognizable legal theory” or “the absence of sufficient facts alleged under a cognizable legal theory.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). A complaint need only satisfy the minimal notice pleading requirements of Rule 8(a)(2)—a short and plain statement—to survive a motion to dismiss for failure to state a claim under Rule 12(b)(6). *Porter v. Jones*, 319 F.3d 483, 494 (9th Cir. 2003); Fed. R. Civ. P. 8(a)(2). For a complaint to sufficiently state a claim, its “[f]actual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). While specific facts are not necessary so long as the complaint gives the defendant fair notice of the claim and the grounds upon which the claim rests, a complaint must nevertheless “contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Iqbal’s plausibility standard “asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.* Rule 8 demands more than a complaint that is merely consistent with a defendant’s liability—labels and conclusions, or formulaic recitals of the elements of a cause of action do not suffice. *Id.* The determination whether a complaint satisfies the plausibility standard is a “context-specific task that requires the reviewing court to draw on its judicial experience and common sense.” *Id.* at 679.

When considering a Rule 12(b)(6) motion, a court is generally limited to the pleadings and must construe “[a]ll factual allegations set forth in the complaint . . . as true and . . . in the light most favorable to [the plaintiff].” *Lee v. City of L.A.*, 250 F.3d 668, 688 (9th Cir. 2001). Conclusory allegations, unwarranted deductions of fact, and unreasonable inferences need not be blindly accepted as true by the court. *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001). Yet, a complaint should be dismissed only if “it appears beyond doubt that the plaintiff can prove no set of facts”

1 supporting plaintiff's claim for relief. *Morley v. Walker*, 175 F.3d 756, 759 (9th Cir.
2 1999).

3 As a general rule, leave to amend a complaint that has been dismissed should be
4 freely granted. Fed. R. Civ. P. 15(a). However, leave to amend may be denied when
5 "the court determines that the allegation of other facts consistent with the challenged
6 pleading could not possibly cure the deficiency." *Schreiber Distrib. Co. v. Serv-Well*
7 *Furniture Co.*, 806 F.2d 1393, 1401 (9th Cir.1986); *see Lopez v. Smith*, 203 F.3d
8 1122, 1127 (9th Cir. 2000).

9 IV. DISCUSSION

10 Toyrrific's Complaint alleges seven claims for: (1) violation of the Lanham
11 Act; (2) copyright infringement; (3) contributory infringement; (4) trade dress
12 infringement; (5) breach of contract; (6) fraud without intent to perform—rescission
13 of settlement agreement; and (7) unfair competition. Defendants move to dismiss
14 Toyrrific's Complaint in its entirety under Rule 12(b)(6) for failure to state a claim. In
15 addition, should the Court dismiss all of the claims except the fifth, Defendants move
16 to dismiss the fifth claim for breach of contract pursuant to Rule 12(b)(1) for lack of
17 subject-matter jurisdiction. Finally, Defendants move for a more definite statement as
18 to Amerkhanian's role in the alleged claims pursuant to Rule 12(e). The Court
19 considers each of Defendants' motions in turn.

20 A. Rule 12(b)(6) Motion to Dismiss

21 1. Parties subject to the Agreement

22 The Court begins by addressing whether new Defendants Amerkhanian and
23 EDO Trading are bound by the Agreement executed in *Toyrrific I*. That Agreement
24 not only released all claims the *Toyrrific I* litigants had against each other, but also
25 those claims that could be asserted against their "present and former agents, . . .
26 affiliates, . . . partners, . . . associates, . . . representatives, . . . and all those claiming
27 by, through, under or in concert with them from any and all claims, administrative
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1 claims, demands, and/or causes of action heretofore or hereafter arising out of,
2 connected with, or incidental to [*Toyrrific I*].” (Agreement ¶ 4.)

3 Defendants argue that Amerkhanian is subject to the Agreement because she is
4 Minasyan’s girlfriend and therefore “associate.” (Mot. 8–9.) Defendants further
5 contend that EDO Trading is Karapetian and Minasyan’s “affiliate” because
6 Karapetian and Minasyan founded EDO Trading along with Amerkhanian. (Mot. 9.)
7 Toyrrific responds that neither Amerkhanian nor EDO Trading were parties to
8 *Toyrrific I*, and the fact that Amerkhanian is the girlfriend of one of the prior
9 Defendants does not make her, or any company she helped form, subject to the
10 Agreement. (Opp’n 8.)

11 While a girlfriend may not be automatically bound under her boyfriend’s
12 contracts, the Complaint alleges that Amerkhanian played a direct role in creating
13 EDO Trading while associating with Karapetian and Minasyan. (Compl. ¶ 4.)
14 Specifically, Toyrrific alleges that Defendants (including Amerkhanian) purchased the
15 www.airsofttrc.com URL on February 17, 2011, and that Amerkhanian helped
16 Minasyan and Karapetian form EDO Trading on June 30, 2011 (Compl. ¶ 20)—both
17 of which occurred after the Court entered the preliminary injunction in *Toyrrific I* on
18 November 24, 2010, but before the parties resolved *Toyrrific I* by the Agreement on
19 December 12, 2012.

20 The Agreement’s release clause is unambiguous in its intention to bind those
21 working with Minasyan and Karapetian in matters relating to *Toyrrific I*. Taking as
22 true Toyrrific’s allegations that Amerkhanian associated with Karapetian and
23 Minasyan in creating and maintaining EDO Trading in violation of the Agreement, it
24 takes no stretch of the imagination to construe Amerkhanian as an affiliate, employee,
25 partner, associate, or representative of Minasyan—their romantic relationship
26 notwithstanding. And as a simple matter of policy, Toyrrific cannot skirt the
27 restrictions of the Agreement’s release clause by suing those who, while not express
28 parties to the Agreement, performed the same infringing conduct along with the

1 *Toyrrific I* parties. Thus, the Court finds that the Agreement applies to all of the
2 moving Defendants.

3 2. *Preclusion of claims under the Agreement*

4 Rather than consider the merits of each claim individually, the Court proceeds
5 to consider the overarching issue in this case: whether the Agreement executed in
6 *Toyrrific I* precludes Toyrrific from bringing the claims alleged in its Complaint. This
7 is Defendants' main argument for dismissal of Toyrrific's first, second, third, fourth,
8 sixth, and seventh claims, which all revolve around Defendants' alleged infringement
9 upon Toyrrific's business, HobbyTron.

10 In its Complaint and opposition to Defendants' motions, Toyrrific primarily
11 emphasizes that Defendants misrepresented their intentions to abide by the Court's
12 preliminary injunction, and that these misrepresentations should void the Agreement
13 entirely. (Compl. ¶ 59; Opp'n 7.) Specifically, Toyrrific alleges that while
14 Defendants promised in the Agreement to comply with the Court's preliminary
15 injunction and cease infringement of HobbyTron, Defendants actually had concurrent
16 plans (and had taken steps) to continue unlawful competition by creating the new
17 website, airsofttrc.com. (Compl. ¶ 46–49.)

18 Generally, a party fraudulently induced into entering an agreement is entitled to
19 a rescission of the agreement. *Cont'l Airlines, Inc. v. Goodyear Tire & Rubber Co.*,
20 819 F.2d 1519, 1526 (9th Cir. 1987). Were this the case here, the Agreement would
21 be void. But while Toyrrific contends it relied on Defendants' representations in the
22 Agreement, the Agreement itself unambiguously states that the parties "did not rely
23 upon any . . . statement, representation or promise . . . in executing this Settlement
24 Agreement, but instead relied upon their own investigation, legal counsel and
25 judgment." (Agreement ¶ 7(a).) Further, the parties agreed in the Agreement to
26 release each other from claims relating to the release that were both *known or*
27 *unknown*, even while acknowledging that "they may hereafter discover claims or facts
28 in addition to or different from those that they now know or believe to exist with

1 respect to the subject matter of this Settlement Agreement and which . . . may have
2 materially affected this settlement.” (Agreement ¶ 5.)

3 So, contrary to Toyrrific’s contentions that it was fraudulently induced to enter
4 into the Agreement, Toyrrific, Karapetian, and Minasyan explicitly and purposely
5 represented in the enforceable, arm’s length Agreement that they had *not* relied on any
6 representations made by other parties to the agreement. This provision in the
7 Agreement unravels Plaintiff’s entire argument that it was fraudulently induced.
8 Thus, considering the intention of the parties expressed in the Agreement, the Court
9 finds there was no fraudulent inducement on the part of the Defendants, and therefore
10 Toyrrific is not entitled to rescission.

11 Because the Court has established that the Agreement itself is enforceable, the
12 vital issue now becomes whether Defendants’ current infringing activity of
13 maintaining a competing company is subject to the Agreement, which precludes any
14 claims “arising out of, connected with, or incidental to” the *Toyrrific I* litigation.
15 (Agreement ¶ 4.)

16 Under California law, “the fundamental goal of contract interpretation is to give
17 effect to the mutual intent of the parties as it existed at the time of contracting.” *U.S.*
18 *Cellular Inv. Co. of L.A. v. GTE Mobilnet, Inc.*, 281 F.3d 929, 934 (9th Cir. 2002).
19 Here, the language of the release clearly conveys the parties’ intent to discharge all
20 unknown claims “absolutely, forever and fully,” particularly in light of the parties’
21 express waiver of the protections of California Code Section 1542.³ (Agreement 5,
22 ¶ 4.) Further, it is evident that the parties intended to settle more than those claims
23 dealing directly with Hobbychase.com, as the language of the Agreement broadly
24 absolves Defendants from liability for claims even “incidental to” *Toyrrific I*.
25 (Agreement 2.)

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27 ³ Section 1542 of the California Civil Code provides that “a general release does not extend to
28 claims which the creditor does not know or expect to exist in his or her favor at the time of executing
the release, which if known by him or her must have materially affected his or her settlement with
the debtor.” Cal. Civ. Code § 1542.

1 Toyrrific alleges that Defendants' current business is "nearly identical" to
 2 HobbyChase, and Defendants' new website, airsofttrc.com, uses the same platform,
 3 design, layout, and structure as the HobbyChase website. (Compl. ¶¶ 6, 20.)
 4 Therefore, the Agreement specifically excludes Toyrrific's present claims, which are
 5 clearly incidental to and connected with the first action brought before this Court.

6 Because the Agreement precludes Toyrrific from bringing its first, second,
 7 third, fourth, sixth, and seventh claims, Defendants' Motion to dismiss with respect to
 8 these claims is **GRANTED**.

9 *3. Fifth claim for breach of contract*

10 The release clause of the Agreement impedes future actions "[e]xcept as to such
 11 rights or claims as may be created by this Settlement Agreement." (Agreement 5,
 12 ¶ 4.) Thus, the only potentially viable claim in Toyrrific's present Complaint is for
 13 breach of the Agreement itself.

14 To state a claim for breach of contract under California law, a plaintiff must
 15 plead: (1) the existence of the contract; (2) plaintiff's performance or excuse for
 16 nonperformance of the contract; (3) defendant's breach of the contract; and
 17 (4) resulting damages. *Reichert v. Gen. Ins. Co. of Am.*, 68 Cal. 2d 822, 830 (1968).
 18 Toyrrific has properly alleged all the elements of a valid breach of contract claim.

19 In the Complaint, Toyrrific contends that Defendants breached the Agreement
 20 by failing to comply with the terms of the Court's preliminary injunction, failing to
 21 stop operating a website similar to hobbychase.com, failing to cease operating the
 22 HobbyChase business, and failing to deliver assets of HobbyChase as described in the
 23 Bill of Sale to the Agreement. (Compl. ¶ 49.) Further, Toyrrific pleads that it
 24 performed all conditions required of it under the Agreement, and that as a result of
 25 Defendants' breach, it has incurred damages exceeding one million dollars. (*Id.*) This
 26 easily suffices to meet Toyrrific's relatively light pleading burden for the purposes of
 27 a motion to dismiss.

1 Because Toyrrific sufficiently pleads its breach of contract claim, Defendants'
2 Motion with respect to Toyrrific's fifth claim is **DENIED**.

3 **B. Rule 12(b)(1) Motion to Dismiss**

4 Next, Defendants argue that if the fifth claim for breach of contract is left to
5 stand alone, it should be dismissed based for lack of subject-matter jurisdiction under
6 Rule 12(b)(1). But the Court may exercise ancillary jurisdiction, which allows federal
7 courts to hear otherwise improper matters that are incidental to other actions before
8 them. *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 378 (1994).

9 For a Court to assert ancillary jurisdiction in the enforcement of a settlement
10 agreement, the party seeking enforcement must allege a violation of the agreement.
11 *Alvarado v. Table Mountain Rancheria*, 509 F.3d 1008, 1017 (9th Cir. 2007). Here,
12 Toyrrific's fifth claim alleges violation of the Agreement itself. Further, the
13 Agreement's provision that "[t]he Honorable Otis D. Wright II, (*sic*) shall retain
14 jurisdiction over this matter if a breach is alleged by either Party" enables the Court to
15 retain jurisdiction. *Kokkonen*, 511 U.S. at 381–82 ("[A] federal court has jurisdiction
16 to enforce a settlement agreement in a dismissed case when . . . the court has retained
17 jurisdiction over the settlement contract."). The Court therefore asserts ancillary
18 jurisdiction over the fifth claim, and Defendants' Motion pursuant to Rule 12(b)(1) is
19 **DENIED**.

20 **C. Rule 12(e) Motion for a More Definite Statement**

21 Defendants finally contend that Toyrrific's allegations regarding Defendant
22 Amerkhanian are ambiguous, and thus, if not dismissed, require a more definite
23 statement as to Amerkhanian's role in the alleged misconduct. As the majority of
24 Toyrrific's claims have been dismissed, the Court need only concern itself with
25 whether Toyrrific has successfully pleaded that Amerkhanian is a proper defendant in
26 the breach-of-contract claim.

27 "If a pleading to which a responsive pleading is permitted is so vague or
28 ambiguous that a party cannot reasonably be required to frame a responsive pleading,

1 the party may move for a more definite statement before interposing a responsive
2 pleading.” Fed. R. Civ. P. 12(e). However, courts disfavor 12(e) motions to strike
3 since pleadings in federal courts are only required to fairly notify the opposing party
4 of the nature of the claim. *Griffin v. Cedar Fair, L.P.*, 817 F. Supp. 2d 1152, 1154
5 (N.D. Cal. 2011).

6 In the Complaint, Toyrrific states that Amerkhanian, along with Minasyan and
7 Karapetyan, “previously formed [EDO Trading] on or about June 30, 2011.” (Compl.
8 ¶ 20.) Defendant contends that the word “formed” is vague. The Court disagrees;
9 Toyrrific has more than adequately indicated that Amerkhanian played a sufficient
10 role in breaching the Agreement by creating and maintaining EDO Trading.
11 Defendants’ motion under Rule 12(e) is therefore **DENIED**.

12 V. CONCLUSION

13 For the reasons discussed above, Defendants’ Motion is **GRANTED** with
14 respect to Toyrrific’s first, second, third, fourth, sixth, and seventh claims. The
15 Motion with respect to Toyrrific’s fifth claim for breach of contract is **DENIED**.

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17 **IT IS SO ORDERED.**

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19 August 16, 2012



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22 **OTIS D. WRIGHT, II**
23 **UNITED STATES DISTRICT JUDGE**
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